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## 7. CAUSES OF SUCCESSION

A claimant can only be considered as capable of inheriting if he or she is associated with the deceased in one or more of the three following causes of succession. These three causes of succession are:

### 1. Marital tie (*Nikah*)

Subsistence of the marriage constructively or actually at the time of the death of the *propositus*. See chapter 47 for details.

### 2. Blood relationship (*Nasab*)

In Sunni Islamic law, this cause is applicable to the paternal connection only. Blood relationship as a cause of succession is severed between an illegitimate individual and his father together with the blood relatives of the father. See chapter 26 for details.

### 3. Fictitious relationship (*Wala'*)

*Wala'* literally means friendship and assistance. It is a bond between two individuals which creates a relationship between them allowing inheritance. The *Hanafi* jurists recognise two kinds of *Wala'*, the master of a manumitted slave (*Wala' Al-'Itiq* or *Mawla Al-'Itiq*) and the successor by contract (*Wala' Al-Mawla* or *Mawla Al-Mawla*). I have mentioned these potential heirs for the sake of completeness and historical significance.

- An heir may have more than one cause of inheritance such as a husband who is also an agnatic cousin. See chapter 43.

## 8. GENERAL RULES OF SUCCESSION

### Key points:

After the death of an individual there are four rights that need to be performed/settled regarding his property/estate:

1. Pay funeral and burial expenses.
2. Pay all debts
3. Pay bequests/legacies from up to 1/3 of the remaining estate.
4. Distribute the remaining estate amongst the heirs of the deceased according to *Shar'ah*. It is a practice in some Islamic countries e.g. Malaysia, that the issue of joint acquired property is to be settled prior to any distribution of the estate.

### 8.1 CONCEPT OF THE ESTATE (*Al-TARIKAH*)

- ♦ After the death of an individual his estate devolves upon his legal heirs (*Warathah*).<sup>[1]</sup>
- ♦ According to the *Hanafi Fiqh* the part of the estate covered by debts and bequests/legacies does not devolve upon the heirs at the time of death of the *propositus*. According to the *Shafi'i* and *Hanbali Fiqh*, the whole of the estate including the indebted part devolves

<sup>[1]</sup> It should be noted that in classical *Hanafi* law there is the concept of fictitious survival of the deceased in which the deceased remains the owner of his estate until all his obligations have been discharged. In this concept, the estate is administered by the *Qadi* (judge), and there is no need for an executor.